

AMENDED IN ASSEMBLY JUNE 29, 1998

AMENDED IN ASSEMBLY JUNE 9, 1998

AMENDED IN SENATE APRIL 24, 1997

**SENATE BILL**

**No. 678**

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**Introduced by Senator Leslie**

February 25, 1997

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An act to amend Sections 703 and 1760.5 of, and to add Sections 703.1 and 1773 to, the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 678, as amended, Leslie. Insurance: surplus lines.

Existing law provides that certain acts relative to nonadmitted insurers are misdemeanors, including the advertising in any manner of a nonadmitted insurer in this state. These prohibitions do not apply when the acts are performed by a surplus line broker.

This bill would authorize advertising by nonadmitted insurers under certain conditions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 703 of the Insurance Code is  
2 amended to read:

1 703. Except when performed by a surplus line broker,  
2 the following acts are misdemeanors when done in this  
3 state:

4 (a) Acting as agent for a nonadmitted insurer in the  
5 transaction of insurance business in this state.

6 (b) In any manner advertising a nonadmitted insurer  
7 in this state.

8 (c) In any other manner aiding a nonadmitted insurer  
9 to transact insurance business in this state.

10 In addition to any penalty provided for commission of  
11 misdemeanors, a person violating any provision of this  
12 section shall forfeit to this state the sum of five hundred  
13 dollars (\$500), together with one hundred dollars (\$100)  
14 for each month or fraction thereof during which he or she  
15 continues the violation. This section shall not apply to  
16 advertising authorized by Section 703.1, subdivision (h)  
17 of Section 1760.5, or Section 1773.

18 SEC. 2. Section 703.1 is added to the Insurance Code,  
19 to read:

20 703.1. (a) Any nonadmitted insurer that is on the list  
21 of eligible surplus line insurers issued by the  
22 commissioner pursuant to subdivision (f) of Section  
23 1765.1 may advertise in ~~any~~ *all* media, provided that all of  
24 the following apply: (1) the insurer's ~~nonadmitted~~  
25 *unlicensed* status in California is disclosed in type of a size  
26 no smaller than ~~the smallest type size used elsewhere~~ *any*  
27 *telephone number, address, or fax number appearing in*  
28 *the advertisement or solicitation,* (2) the advertisement  
29 does not contain any assertion, representation, or  
30 statement with respect to the business of insurance or  
31 with respect to any person in the conduct of his or her  
32 insurance business, that is untrue, deceptive, or  
33 misleading, and that is known, or that by the exercise of  
34 reasonable care should be known, to be untrue,  
35 deceptive, or misleading, ~~and~~ (3) the advertisement does  
36 not contain any information about the nonadmitted  
37 insurer's premiums or rates, *and (4) no specific product*  
38 *shall be advertised in a newspaper of general circulation,*  
39 *in a television or radio broadcast, or in a news magazine*  
40 *of general circulation.*

(b) Any nonadmitted insurer that is not on the list of eligible surplus line insurers issued by the commissioner pursuant to subdivision (f) of Section 1765.1 may advertise in ~~any~~ *all* media, except for media that are targeted primarily at insureds or prospective insureds residing in California, provided that all of the conditions set forth in subdivision (a) are complied with and the advertisement does not contain any information about the insurer's specific products.

(c) A group of nonadmitted insurers may advertise to the same extent as a nonadmitted insurer, subject to the same requirements set forth in subdivision (a) or (b), as applicable.

(d) An eligible nonadmitted insurer that is a member of a group of insurers may include the name of the group in advertisements that are authorized by this section.

(e) The permission to advertise granted by this section shall not be deemed to authorize an insurer to do business in this state.

SEC. 3. Section 1760.5 of the Insurance Code is amended to read:

1760.5. (a) The provisions of this chapter limiting the insurance that may be placed with nonadmitted insurers and requiring any report thereof shall not apply to:

(1) Reinsurance of the liability of an admitted insurer.

(2) Insurance against perils of navigation, transit or transportation upon hulls, freights or disbursements, or other shipowner interests; upon goods, wares, merchandise and all other personal property and interests therein, in course of exportation from or importation into any country, or transportation coastwise, including transportation by land or water from point of origin to final destination and including war risks; and marine builder's risks, drydocks and marine railways, including insurance of ship repairer's liability, and protection and indemnity insurance, but excluding insurance covering bridges or tunnels.

(3) Aircraft or spacecraft insurance.

(4) Insurance on property or operations of railroads engaged in interstate commerce.

1 (b) The insurance specified in paragraphs (2), (3),  
2 and (4) of subdivision (a) may be placed with a  
3 nonadmitted insurer only by and through a special lines'  
4 surplus line broker. The license of a special lines' surplus  
5 line broker shall be applied for and procured and shall be  
6 subject to the same fees for filing on issuance in the same  
7 manner as the license of a surplus line broker, except that  
8 in lieu of the bond required by Section 1765, there shall  
9 be delivered to the commissioner a bond in the form,  
10 amounts, and conditions specified in Sections 1663 and  
11 1665 for an insurance broker and only one fee shall be  
12 collected from one person for both licenses. The licensee  
13 in respect to the business shall be subject to all the  
14 provisions of this chapter except Sections 1761, 1763,  
15 1765.1, and 1775.5.

16 (c) The commissioner may address to any licensed  
17 special lines' surplus lines broker a written request for full  
18 and complete information respecting the financial  
19 stability, reputation, and integrity of any nonadmitted  
20 insurer with whom the licensee has dealt or proposes to  
21 deal in the transaction of insurance specified in  
22 paragraphs (2), (3), or (4) of subdivision (a). The  
23 licensee so addressed shall promptly furnish in written or  
24 printed form so much of the information requested as he  
25 or she can produce together with a signed statement  
26 identifying the same and giving reasons for omissions, if  
27 any. After due examination of the information and  
28 accompanying statement, the commissioner may, if he or  
29 she believes it to be in the public interest, order in writing  
30 the licensee to place no further insurance business on  
31 property located or operations conducted within or on  
32 the lives of persons who are residents of this state with  
33 that nonadmitted insurer on behalf of any person. Any  
34 placement with that nonadmitted insurer made by a  
35 licensee after receipt of the order is a violation of this  
36 chapter. The commissioner may issue an order if he or she  
37 finds that a nonadmitted insurer with whom the licensee  
38 has dealt or proposes to deal in the transaction of  
39 insurance is in an unsound financial condition, is  
40 disreputable, or is lacking in integrity. The order shall also

1 include notice of a hearing to be held at a time and place  
2 fixed therein, which shall be not less than 20 nor more  
3 than 30 days from service of the order upon the licensee.

4 (d) The commissioner may, in respect to business  
5 written or placed under the provisions of this section,  
6 require information and reports thereof that the  
7 commissioner considers necessary, convenient, or  
8 advisable.

9 (e) Each placing of insurance in violation of this  
10 chapter is a misdemeanor.

11 (f) The commissioner may revoke, suspend, or deny  
12 any license granted pursuant to this code in accordance  
13 with the procedure provided in Article 13 (commencing  
14 with Section 1737) of Chapter 5, or any certificate of  
15 authority granted pursuant to this code in accordance  
16 with the procedure provided in Section 704 whenever the  
17 commissioner finds that the licensee or holder of the  
18 certificate has committed a violation of this section.

19 (g) The premium for insurance placed by or through  
20 a special lines' surplus line broker pursuant to this section  
21 shall not be subject to the tax imposed upon the broker  
22 based upon gross premiums paid for insurance placed  
23 under authority conferred by the license.

24 (h) Special lines' surplus—~~insurance~~ *line* brokers may  
25 advertise and solicit in conformity with Section 1773,  
26 except that they are not subject to the limitation that any  
27 nonadmitted insurer's name appearing in the  
28 advertisements *or solicitations* must be authorized to  
29 accept placements under Section 1765.1.

30 SEC. 4. Section 1773 is added to the Insurance Code,  
31 to read:

32 1773. Surplus—~~lines~~ *line* brokers may advertise and  
33 solicit using print, electronic media, direct mail, and—~~any~~  
34 *all* other advertising or marketing media. These  
35 advertisements and solicitations may include a  
36 description of nonadmitted insurance products available  
37 through the surplus line broker, and may include the  
38 name of any nonadmitted insurer, provided that all of the  
39 following apply: (a) the insurer is authorized to accept  
40 placements from the surplus line broker pursuant to

1 Section 1765.1, (b) a nonadmitted insurer's name is not  
2 used in connection with any nonadmitted insurance  
3 product of that insurer, (c) the ~~nonadmitted unlicensed~~  
4 status of the insurer or of the insurance products is  
5 disclosed in type *of a size* no smaller than ~~the smallest type~~  
6 ~~used elsewhere~~ any telephone number, address, or fax  
7 number appearing in the advertisement or solicitation,  
8 and (d) the advertisement or solicitation does not contain  
9 any assertion, representation, or statement with respect  
10 to the business of insurance, or with respect to any person  
11 in the conduct of his or her insurance business, that is  
12 untrue, deceptive, or misleading, and that is known, or  
13 that by the exercise of reasonable care should be known,  
14 to be untrue, deceptive, or misleading. If the insurance is  
15 available from an eligible nonadmitted insurer that is a  
16 member of a group of insurers, advertisements and  
17 solicitations in accordance with this section may include  
18 the name of the group. A surplus line broker's  
19 advertisements and solicitations shall not include any  
20 information about a nonadmitted insurer's premiums or  
21 rates.

